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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Computer III Remand

Proceedings: Bell Operating

Company Safeguards and

Tier 1 Local Exchange Company

Safeguards

Computer III Further Remand

Proceedings: Bell Operating

Company Provision of

Enhanced Services

CC Docket No. 90-623

CC Docket No. 95-20 ✓

ORDER

Adopted: May 14, 1997

Released: May 14, 1997

By the Chief, Policy and Program Planning Division:

I. INTRODUCTION

1. On March 6, 1992, the Association of Telemessaging Services International, Inc. (ATSI) filed a petition for reconsideration¹ of the *BOC Safeguards Order* in CC Docket No. 90-623, the *Computer III Remand* proceeding.² On December 10, 1996, ATSI filed a

¹ Petition for Reconsideration of the Association of Telemessaging Services International, Inc., CC Docket No. 90-623 filed Mar. 6, 1992 (ATSI Petition). The scope of this order is limited to the issue of joint marketing of basic and enhanced services because the Commission in a previous order dismissed the remainder of ATSI's petition as moot. See *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards and Rules Governing Telephone Companies' Use of Customer Proprietary Network Information*, CC Docket Nos. 90-623, 92-256, Order, 11 FCC Rcd 16617 (1996).

² *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards* (Computer III Remand proceeding), CC Docket No. 90-623, Report and Order, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*).

motion to withdraw its petition for reconsideration in CC Docket No. 90-623³ and to incorporate it into the Commission's *Computer III Further Remand* proceeding in CC Docket No. 95-20,⁴ as well as other proceedings.⁵ In its motion, ATSI states that the issues raised in its pending petition for reconsideration have applicability in these proceedings and, therefore, it is appropriate for the Commission to incorporate ATSI's petition for reconsideration of the *BOC Safeguards Order* into these proceedings.

2. We find it appropriate to incorporate ATSI's petition into the *Computer III Further Remand* proceeding, but not into the other proceedings, for the reasons discussed below. We therefore grant ATSI's motion to withdraw its petition for reconsideration of the *BOC Safeguards Order* in CC Docket No. 90-623, the *Computer III Remand* proceeding, and to incorporate the petition in CC Docket No. 95-20, the *Computer III Further Remand* proceeding. We deny ATSI's motion to incorporate this same petition for reconsideration in the *Non-Accounting Safeguards* proceeding in CC Docket No. 96-149, or the *Telemessaging, Electronic Publishing, and Alarm Monitoring Services* proceeding in CC Docket No. 96-152.

³ Motion To Withdraw Petition for Reconsideration in *Computer III Remand* Proceedings and To Incorporate the Same in *Computer III Further Remand* Proceedings and Other Proceedings, CC Docket Nos. 90-623, 95-20, 96-149, and 96-152 filed Dec. 10, 1996 (ATSI Motion).

⁴ See *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services* (*Computer III Further Remand* proceeding), CC Docket No. 95-20, Notice of Proposed Rulemaking, 10 FCC Rcd 8360 (1995) (*Computer III Further Remand Notice*).

⁵ ATSI requests that its petition also be incorporated into CC Docket Nos. 96-149 and 96-152. The Commission recently issued reports and orders in these proceedings. See *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149 (*Non-Accounting Safeguards* proceeding), First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-489 (rel. Dec. 24, 1996) (*Non-Accounting Safeguards Order*); *Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, CC Docket No. 96-152 (*Telemessaging, Electronic Publishing, and Alarm Monitoring Services* proceeding), First Report and Order and Further Notice of Proposed Rulemaking, FCC 97-35 (rel. Feb. 7, 1997) (*Telemessaging and Electronic Publishing Order*), and Second Report and Order, 12 FCC Rcd 3824 (1997).

II. DISCUSSION

3. In the *Computer III* proceeding,⁶ the Commission adopted a regulatory framework that permits the Bell Operating Companies (BOCs) to provide enhanced services on an integrated basis pursuant to safeguards designed to protect against anticompetitive behavior by the BOCs.⁷ In the *BOC Safeguards Order*, the Commission revised the nonstructural safeguards that the Commission previously had adopted in the *Computer III* proceeding for the provision of enhanced services by the BOCs. Among other things, the Commission concluded in the *BOC Safeguards Order* that the BOCs may continue to engage in joint marketing of basic and enhanced services when they provide these services on an integrated basis subject to the nonstructural safeguards established in that order.⁸

4. In its March 1992 petition for reconsideration, ATSI argues that the *BOC Safeguards Order* should be modified to prohibit the BOCs from joint marketing basic and enhanced services.⁹ In November 1994, the United States Court of Appeals for the Ninth Circuit remanded the *BOC Safeguards Order* to the Commission;¹⁰ in response, the

⁶ *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III)*, Phase I, CC Docket No. 85-229, Report and Order, 104 FCC 2d 958 (1986) (*Phase I Order*), *recon.*, Memorandum Opinion and Order on Reconsideration, 2 FCC Rcd 3035 (1987) (*Phase I Reconsideration Order*), *further recon.*, Memorandum Opinion and Order on Further Reconsideration, 3 FCC Rcd 1135 (1988), *second further recon.*, Memorandum Opinion and Order on Further Reconsideration and Second Further Reconsideration, 4 FCC Rcd 5927 (1989), *Phase I Order* and *Phase I Reconsideration Order vacated California v. FCC*, 905 F.2d 1217 (9th Cir. 1990); Phase II, Report and Order, 2 FCC Rcd 3072 (1987) (*Phase II Order*), *recon.*, Memorandum Opinion and Order on Reconsideration, 3 FCC Rcd 1150 (1988), *further recon.*, Memorandum Opinion and Order on Further Reconsideration and Second Further Reconsideration, 4 FCC Rcd 5927 (1989); *Phase I Order* and *Phase II Order vacated, California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceedings*, CC Docket No. 90-368, Report and Order, 5 FCC Rcd 7719 (1990), *recon.*, Memorandum Opinion and Order on Reconsideration, 7 FCC Rcd 909 (1992), *pets. for review denied, California v. FCC*, 4 F.3d 1505 (9th Cir. 1993); *BOC Safeguards Order*, CC Docket No. 90-623, Report and Order, 6 FCC Rcd 7571, *vacated in part and remanded, California v. FCC*, 39 F.3d 919 (9th Cir. 1994), *cert. denied*, 115 S.Ct. 1427 (1995).

⁷ *BOC Safeguards Order*, 6 FCC Rcd at 7575.

⁸ *Id.* at 7576, 7610. Under the structural separation requirements established in *Computer II*, joint marketing was banned. *See, e.g., Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II)*, Docket No. 20828, Final Decision, 77 FCC 2d 384, 475-87, ¶¶ 233-64.

⁹ ATSI Petition at 3-6.

¹⁰ The court concluded that the Commission had not sufficiently explained its conclusion that totally removing structural separation requirements was in the public interest, given that the Commission's Open Network Architecture requirements no longer called for "fundamental unbundling" of the BOC networks. *California III*, 39 F.3d at 930.

Commission initiated a proceeding on remand in February 1995.¹¹ The *Computer III Further Remand* proceeding sought comment on, among other things, whether structural separation should be reimposed for some or all BOC enhanced services.¹²

5. In February 1996, the Telecommunications Act of 1996 became law.¹³ Section 272 of the Act requires the BOCs to provide interLATA services, including interLATA information services, through a separate affiliate.¹⁴ Section 272 also sets forth joint marketing rules applicable to the BOCs' provision of interLATA services.¹⁵ Also, under section 274 of the Act, BOCs providing electronic publishing services¹⁶ on an inter- or intraLATA basis must do so pursuant to a section 274 affiliate and subject to the joint marketing rules in that section.¹⁷ Therefore, we find that the joint marketing issue raised in ATSI's petition has been rendered moot by the Act with respect to the services covered by sections 272 and 274.

6. Since ATSI's petition also applies to information services not covered by sections 272 or 274 of the Act, such as intraLATA information services (excluding intraLATA electronic publishing services), those issues are properly considered in the Commission's *Computer III Further Remand* proceeding. Therefore, we will incorporate the ATSI petition into that proceeding.

¹¹ See *Computer III Further Remand* proceeding, *supra* note 4.

¹² *Computer III Further Remand Notice*, 10 FCC Rcd at 8384.

¹³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act) (codified at 47 U.S.C. §§ 151 *et seq.*). Hereinafter, all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code. The 1996 Act amended the Communications Act of 1934. We will refer to the Communications Act of 1934, as amended, as "the Act."

¹⁴ See 47 U.S.C. § 272(a); see also *Non-Accounting Safeguards* proceeding, *supra* note 5. The Commission recently concluded that all of the services that we previously considered to be "enhanced services," defined in section 64.702(a) of the Commission's rules, are "information services," as that term is defined in section 3(20) of the Act. *Non-Accounting Safeguards Order* at ¶ 102.

¹⁵ See 47 U.S.C. § 272(g).

¹⁶ The Act defines electronic publishing service as an information service. See 47 U.S.C. § 153(20).


¹⁷ See 47 U.S.C. § 274; see also *Telemessaging and Electronic Publishing Order*, *supra* note 5.

III. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and (j) of the Communications Act, as amended, 47 U.S.C. §§ 154(i) and (j), and sections 0.201-0.204 of the Commission's rules, 47 C.F.R. §§ 0.201-0.204, that the motion filed by ATSI on December 10, 1996, IS GRANTED to the extent indicated above and otherwise IS DENIED.

8. IT IS FURTHER ORDERED that the ATSI petition for reconsideration is withdrawn in CC Docket No. 90-263, and is incorporated into the Commission's *Computer III Further Remand* proceeding in CC Docket No. 95-20.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Richard K. Welch". The signature is written in a cursive, flowing style.

Richard K. Welch
Chief, Policy and Program Planning Division
Common Carrier Bureau